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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. 1:10CR185
)	
Plaintiff,)	
)	JUDGE ADAMS
v.)	
)	
FERRIS KLEEM,)	
)	<u>PLEA AGREEMENT</u>
Defendant.)	

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the United States Attorney's Office for the Northern District of Ohio (hereinafter "USAO"), by and through its undersigned attorneys, and the defendant, FERRIS KLEEM (hereinafter "Defendant"), agree as follows:

**MAXIMUM PENALTIES AND OTHER
CONSEQUENCES OF PLEADING GUILTY**

1. **Waiver of Constitutional Trial Rights.** Defendant understands that Defendant has the right to plead not guilty and go to trial. At trial, Defendant would be presumed innocent, have the right to trial by jury or, with the consent of the United States, to trial by the Court, the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses and

subpoena witnesses to testify for the defense, and the right against compelled self-incrimination. Defendant understands that Defendant has the right to an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent Defendant. Defendant understands that, if Defendant pleads guilty and that plea is accepted by the Court, there will not be a further trial of any kind, so that by pleading guilty Defendant waives the right to a trial.

2. **Waiver of Statutory Rights.** Defendant understands that Title 18, United States Code, Section 2518(9) requires that the subject/target of a wiretap receive a ten day notice before a wiretap communication, or evidence derived from such a communication, may be used in any trial, hearing or other proceeding in a federal or state court. Defendant further understands that Title 18, United States Code, Section 2518(8)(d) provides that the subject/target of a wiretap may petition the Court to inspect portions of the intercepted communications, applications and orders. Defendant acknowledges having been advised by his attorney that during the investigation of this case, his telephone conversations were intercepted pursuant to orders signed by a United States District Judge upon application of the USAO. Defendant has discussed the rights contained in 18 U.S.C. § 2518 with his attorney and the consequences of waiving such rights. Defendant knowingly and voluntarily waives any right to: (1) receive the ten day notice, (2) access the recordings, orders and applications, and (3) file a motion to suppress the recordings made pursuant to those orders.

3. **Maximum Sentence.** The statutory maximum sentence for the charge in the Information to which Defendant agrees to plead guilty is as follows:

<u>Statute</u>	<u>Maximum sentence per count</u>
18 U.S.C. § 371	Imprisonment: 5 years Fine: \$250,000 Supervised Release: 3 years

4. **Alternative Maximum Fine.** The maximum fine that the Court may impose is the greater of the statutory maximum stated above or twice the gross pecuniary loss or gain from the offense of conviction.

5. **Sentencing Guidelines.** Defendant understands that federal sentencing law requires the Court to impose a sentence which is sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C. § 3553(a)(2) and that the Court must consider the advisory U.S. Sentencing Guidelines in effect at the time of sentencing in determining the sentence.

6. **Special Assessment.** Defendant will be required to pay a mandatory special assessment of \$100, due immediately upon sentencing.

7. **Costs.** The Court may order Defendant to pay the costs of prosecution and sentence, including but not limited to imprisonment, community confinement, home detention, probation, and supervised release.

8. **Restitution.** The Court may order Defendant to pay restitution as a condition of the sentence, probation, and/or supervised release.

9. **Violation of Probation/Supervised Release.** If Defendant violates any term or condition of probation or supervised release, such violation could result in a period of incarceration or other additional penalty as imposed by the Court. In some circumstances, the combined term of imprisonment under the initial sentence and additional period of incarceration could exceed the maximum statutory term.

ELEMENTS OF THE OFFENSE

10. The elements of the offense to which Defendant will plead guilty are:

18 U.S.C. § 371 (Conspiracy to Commit Bribery in Connection with a Federal Program)

1. Defendant agreed with at least one other person to commit federal program bribery, in violation of 18 U.S.C. § 666,
2. One of the conspirators engaged in at least one overt act furthering the conspiracy's objective,
3. Defendant knew the essential objective of the conspiracy, and
4. Defendant knowingly and voluntarily participated.

18 U.S.C. § 666(a)(1)(B)

1. An agent of an organization or a State or local government or any agency thereof that received federal benefits in excess of \$10,000 in a one-year period,
2. Accepted, agreed to accept, solicited or demanded something of value,
3. The agent acted corruptly with the intent to be influenced or rewarded in connection with the business, transaction or series of transactions of the organization, government or agency involving anything of value of \$5,000 or more.

18 U.S.C. § 666(a)(2)

1. Defendant gave, offered or agreed to give anything of value to,
2. An agent of an organization or a State or local government or any agency thereof that received federal benefits in excess of \$10,000 in a one-year period,
3. Defendant acted corruptly with the intent to influence or reward the agent in connection with the business, transaction or series of transactions of the organization, government or agency involving anything of value of \$5,000 or more.

AGREEMENTS AND STIPULATIONS OF THE PARTIES

GUILTY PLEA / OTHER CHARGES

11. **Agreement to Plead Guilty.** Defendant agrees to plead guilty to Count 1 of the Information in this case.
12. **Agreement Not to Bring Certain Other Charges.** The USAO will not bring any other criminal charges against Defendant with respect to conduct that Defendant disclosed to or discussed with the USAO in the course of proffer interviews.

FACTUAL BASIS AND RELEVANT CONDUCT

13. The parties stipulate to the following facts, which satisfy all of the elements of the offense to which Defendant agrees to plead guilty and constitute relevant conduct under the Sentencing Guidelines: See Attachment A, which is attached hereto and fully incorporated herein.

WAIVER OF APPEAL AND POST-CONVICTION ATTACK

14. Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. The Defendant expressly waives those rights, except as reserved below. Defendant reserves the right to appeal: (a) any punishment in excess of the statutory maximum; (b) any sentence to the extent it exceeds the maximum of the sentencing range determined under the advisory Sentencing Guidelines in accordance with the sentencing stipulations and computations in this agreement, using the Criminal History Category found applicable by the Court. Nothing in this paragraph shall act as a bar to the Defendant perfecting any legal remedies Defendant may otherwise have on appeal or

collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

RESTITUTION AND FINES

15. **Restitution.** Defendant agrees to make full restitution as ordered by the Court pursuant to Title 18, United States Code, Section 3663A, payable immediately on such terms and conditions as the Court may impose, for the losses caused by Defendant's relevant conduct in this case, as defined under Guideline § 1B1.3. Defendant agrees not to seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding. Defendant understands that pursuant to 18 U.S.C. § 3664, the Court shall order the United States Probation Office to prepare a report containing information sufficient for the Court to fashion a restitution order. In preparing that report, the U.S. Probation Office may solicit the views of the United States Attorney's Office, Defendant, and the victim. Defendant understands that any victim has the right to present its position on restitution directly to the Court at the time of sentencing. Based on the evidence obtained at the time of the signing of this plea agreement, Defendant's conduct caused a loss to Cuyahoga County of approximately \$24,000. The parties agree to recommend to the U.S. Probation Office that the Court enter a restitution order against Defendant for \$24,000 (which represents the value of the bribes Defendant paid to PO1, PO2 and J. Kevin Kelley)¹, payable to Cuyahoga County, c/o Cuyahoga County Administrator, 1219 Ontario Street, 4th Floor, Cleveland, Ohio 44113. The parties further agree to request that the Court order Defendant to pay \$24,000 in its entirety, and not order restitution joint and several

¹This amount is higher than the guidelines loss figures set forth in footnote 2, *infra*, which excludes the \$6,000 cash payments to PO1 and PO2, the \$1,150 refrigerator, and the \$200 discount on the television; all of which were disclosed to the government by Defendant in a proffer, and are thus excluded from the guidelines calculation. U.S.S.G. § 1B1.8

with any other co-defendant or co-conspirator or otherwise credit Defendant's restitution order by any amount paid by a co-defendant or co-conspirator.

16. **Timing of Restitution.** The Defendant agrees to deliver a certified check or money order for \$24,000 to the U.S. Attorney's Office within 10 business days of the filing of the Information, payable to the Clerk of Court for the Northern District of Ohio, as security toward a portion of the restitution order that the Court may impose upon Defendant. The parties agree that any monies received by the Clerk of Court prior to sentencing shall be held in escrow by the Clerk of Court until the date of sentencing and, thereafter, to be applied to satisfy the restitution obligation imposed by the Court. The parties further agree that Defendant pay any additional restitution ordered by the Court by whatever deadline the Court imposes, or if none, then within 30 days of sentencing.

17. **Fines.** The Defendant agrees to recommended that the Court order a fine at the high end of the guideline range.

SENTENCING STIPULATIONS AND AGREEMENTS

18. **Recommendation to Use the Sentencing Guidelines Computation.** The parties agree to recommend that the Court impose a sentence within the range determined pursuant to the advisory Sentencing Guidelines in accordance with the computations and stipulations set forth below. The USAO will not request a sentence higher than the advisory Sentencing Guidelines range and the Defendant will not request a sentence lower than the advisory Sentencing Guidelines range. The parties agree that neither party will suggest in any way that a departure or a variance is appropriate other than a departure for substantial assistance as set forth in this agreement. Nothing in this Agreement precludes or in any way limits the right of the Defendant or the USAO to argue that the statutory factors of 18 U.S.C. § 3553(a) merit a lower

sentence or a higher sentence within the advisory Guideline calculation range calculated by the Court.

19. Defendant understands and agrees that the USAO reserves, at the time of sentencing, the right of allocution, that is the right to describe fully, both orally and in writing, to the court the nature, seriousness and impact of the Defendant's misconduct related to the charges against Defendant or to any factor lawfully pertinent to the sentence in this case. Defendant further understands and agrees that in exercising this right, the USAO may solicit and make known the views of the law enforcement agencies that investigated this matter.

20. **Stipulated Guideline Computation.** The parties agree that the following calculation, using the advisory Sentencing Guidelines Manual effective November 1, 2009, represents the correct computation of the applicable offense level in this case and provides a sentencing range that is sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C. Section 3553(a). The parties agree that no other advisory Sentencing Guideline adjustments apply.

Base Offense Level	12	§ 2C1.1(a)
More than one Bribe	2	§ 2C1.1(b)(1)

Value of the payment, the benefit received or the loss to the government from the offense was more than \$5,000 and less than \$30,000 ²	2 or 4 ³	§ 2C1.1(b)(2) & § 2B1.1(b)(1)(C)(D)
Offense Involved Elected Public Official or Any Public Official in A High-Level Decision Making or Sensitive Position	4	§ 2C1.1(b)(3)
Subtotal Before Acceptance of Responsibility	20 or 22	

21. **Acceptance of Responsibility.** The USAO has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct. The USAO agrees to recommend a three (3) level reduction to the sentencing guideline calculation for acceptance of responsibility under U.S.S.G. § 3E1.1, so long as Defendant's conduct continues to reflect Defendant's acceptance of responsibility. Defendant understands, however, that the Court will determine acceptance of responsibility based on Defendant's overall conduct as of the date of sentencing.

²The parties agree that the loss is between \$5,000 and \$30,000; however, for the reasons set forth below, Defendant may argue that the amount is \$10,000 or less and the USAO may argue that the loss is more than \$10,000 but less than \$13,000. The parties agree that the loss should be calculated based on the value of the bribes and that the loss should include the following, totaling \$8,193:

- (1) Entertainment at the Bare Pool prorated for PO1 and Kelley for a total of \$368.
- (2) Dinner at Prime Steak House prorated for PO1 and Kelley for a total of \$400.
- (3) Personal services for PO1, \$1,000
- (4) Gaming chips for Kelley, \$1,000
- (5) Gaming chips for PO1, \$3,425
- (6) Cash toward Rolex watch for PO1, \$2,000

Defendant agrees that the USAO may argue that the Bare Pool and Prime Steak House expenses should not be prorated, and that the total for items (1) and (2) above should be \$3,694 (\$1,475 for the Bare Pool and \$2,219 for Prime Steakhouse). Defendant also agrees that the USAO may also argue that the loss should include the value of the hotel rooms Defendant arranged for the Mirage to "comp" for PO1 (three nights at \$275 per night) and charges to that room which were "comped" (\$323) for a total of \$1,148. Thus, Defendant agrees that the USAO may argue that the loss should be \$12,267.

³ The loss was calculated as set forth in footnote 2 above. For the reasons set forth in Footnote 1 above, this figure is less than the restitution figure.

22. **Criminal History Category.** The parties have no agreement as to the Criminal History Category applicable in this case. Defendant understands that the Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the U.S. Probation Office.

COOPERATION

23. Defendant agrees to cooperate fully with the United States of America and any other state or local government in investigations and prosecutions, as and when requested by the USAO. Such cooperation shall include providing all information, attending all interviews, testifying before all tribunals, providing all documents and records and providing all other forms of cooperation requested by government agents and prosecutors. Such cooperation also includes the obligation to provide truthful and complete information and the obligation not to commit any additional crimes.

24. Defendant understands that in the event he, during any criminal proceedings, commits perjury, suborns perjury, or obstructs justice, nothing in this agreement precludes the United States of America or any other law enforcement authority from prosecuting him fully for those crimes or any other crimes of which he may be guilty and from using any of his sworn or unsworn statements against him. Defendant understands that this plea agreement is explicitly dependent upon him providing completely truthful testimony in any trial or other proceeding, whether called as a witness by the USAO, the defense or the Court.

25. Defendant understands that, in the event this plea agreement is withdrawn or otherwise vacated, the USAO may use the information from his sworn or unsworn statements against him and to impeach him or any witness on his behalf.

26. Defendant further acknowledges that the decision to make a motion under U.S.S.G. Section 5K1.1 under this agreement rests solely and exclusively within the discretion of the United States Attorney for the Northern District of Ohio.

27. If the United States Attorney for the Northern District of Ohio determines that Defendant has fully cooperated with the government, as set forth herein, the USAO, in consideration for such substantial assistance, will move the Court pursuant to U.S.S.G. Section 5K1.1 for a downward departure of up to four (4) levels for his substantial assistance. Defendant agrees that should the USAO make a motion under 5K1.1, that Defendant will not seek or suggest in any way that the Court should apply a downward departure greater than four (4) levels. The parties understand and agree that the final decision as to whether to grant any government motion for a downward departure under Section 5K1.1 and the extent of any such a departure rests with the Court.

28. Defendant understands that in the event he does not fully cooperate or otherwise acts in a fashion inconsistent with the acceptance of responsibility for his criminal conduct, and/or engages in or commits any other criminal or obstructive act during the period of his cooperation, the USAO is released from all its obligations under this agreement, including making a motion under U.S.S.G. Section 5K1.1, and Defendant has no right to withdraw his guilty plea.

29. Defendant agrees to make himself available at all meetings with the government and to respond truthfully and completely to any and all questions put to him, whether in interviews, before a grand jury, or at any trial or other proceedings.

30. Defendant agrees not to accept remuneration or compensation of any sort, directly or indirectly, for the dissemination through books, articles, speeches, interviews, or any other means, of information regarding the transactions alleged in the above-described Information, or

the investigation or prosecution of any civil or criminal cases against him related to the Information.

31. Defendant further understands that, in the event he is sentenced prior to the completion of his cooperation, he agrees that his continued compliance with the condition of cooperation survives the imposition of sentence and that any failure to cooperate is a violation of this agreement which will entitle the government to seek any remedy allowed under this agreement and pursue any charges dismissed or not filed as a result of this agreement as set forth above.

OTHER PROVISIONS

32. **Financial Statement.** Defendant agrees to submit to the USAO, prior to the date of sentencing, a complete and accurate financial statement, on government form OBD-500.

33. **Agreement Silent as to Matters Not Expressly Addressed.** This agreement is silent as to all aspects of the determination of sentence not expressly addressed herein, and the parties are free to advise the Court of facts and to make recommendations to the Court with respect to all aspects of sentencing not agreed to herein.

34. **Sentencing Recommendations Not Binding on the Court.** Defendant understands that the recommendations of the parties will not be binding upon the Court, that the Court alone will decide the applicable sentencing range under the advisory Sentencing Guidelines, whether there is any basis to depart from that range or impose a sentence outside of the Guidelines, and what sentence to impose. Defendant further understands that once the Court has accepted Defendant's guilty plea, Defendant will not have the right to withdraw such a plea if the Court does not accept any sentencing recommendations made on Defendant's behalf or if Defendant is otherwise dissatisfied with the sentence.

35. **Consequences of Breaching the Plea Agreement.** Defendant understands that if Defendant breaches any promise in this agreement or if Defendant's guilty plea or conviction in this case are at any time rejected, vacated, or set aside, the USAO will be released from all of its obligations under this agreement and may institute or maintain any charges and make any recommendations with respect to sentencing that would otherwise be prohibited under the terms of the agreement. Defendant understands, however, that a breach of the agreement by Defendant will not entitle Defendant to withdraw, vacate, or set aside Defendant's guilty plea or conviction.

36. **Waiver of Statute of Limitations.** Defendant waives all defenses based on the statute of limitations with respect to any prosecution that is not already time-barred by the applicable statute of limitation on the date of Defendant's signing of this agreement and that is commenced within 90 days after any of the following events: (1) Defendant fails to plead guilty at the plea proceeding or the Court refuses to accept a guilty plea by Defendant pursuant to this agreement, (2) the Court permits Defendant to withdraw a guilty plea entered pursuant to this agreement or otherwise vacates such a guilty plea, or (3) the convictions following Defendant's guilty plea(s) pursuant to this agreement are vacated, overturned, or abrogated for any reason. Defendant understands the waiver of the statute of limitations is effective immediately upon Defendant's signing of this agreement and is not conditioned upon the approval of this agreement by the Court.

37. **Agreement not Binding on other Jurisdictions and Agencies.** Defendant understands that this plea agreement is binding only on the United States Attorney's Office for the Northern District of Ohio. It does not bind any other United States Attorney, any other federal agency, or any state or local government.

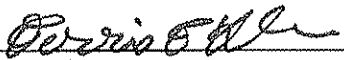
38. **Defendant is Satisfied with Assistance of Counsel.** Defendant makes the following statements: I acknowledge receiving the assistance of counsel from my attorney

concerning this plea agreement. I have fully discussed with my attorney all of my Constitutional and statutory trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, the Sentencing Guidelines, and the potential consequences of pleading guilty in this case. I have had sufficient time and opportunity to discuss all aspects of the case in detail with my attorney and have told my attorney everything I know about the charges, any defense that I may have to those charges, and all personal and financial circumstances in possible mitigation of sentence. My attorney has done everything I have asked my attorney to do and I am satisfied with the legal services and advice provided to me by my attorney and believe that my attorney has given me competent and effective representation.

39. **Agreement Is Complete and Voluntarily Entered.** Defendant and Defendant's undersigned attorney state that this agreement constitutes the entire agreement between Defendant and the USAO and that no other promises or inducements have been made, directly or indirectly, by any agent or representative of the United States government concerning any plea to be entered in this case. In particular, no promises or agreements have been made with respect to any actual or prospective civil or administrative proceedings or actions involving Defendant, except as expressly stated herein. In addition, Defendant states that no person has, directly or indirectly, threatened or coerced Defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

SIGNATURES

Defendant: I have read this entire plea agreement and have discussed it with my attorney. I have initialed each page of the agreement to signify that I have read, understood, and approved the provisions on that page. I am entering this agreement voluntarily and of my own free will. No threats have been made to me, nor am I under the influence of anything that could impede my ability to understand this agreement.



Ferris Kleem

Date 4/21/10

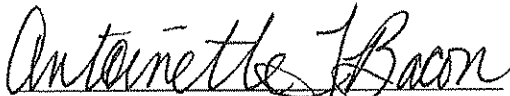
Defense Counsel: I have read this plea agreement and concur in Defendant pleading in accordance with terms of the agreement. I have explained this plea agreement to Defendant, and to the best of my knowledge and belief, Defendant understands the agreement.



Ralph E. Cascarilla
Counsel for Ferris Kleem

Date 4/21/10

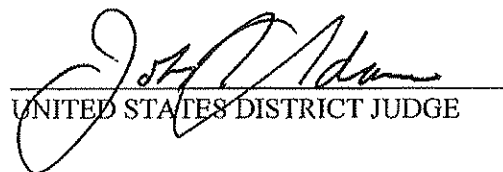
United States Attorney's Office: I accept and agree to this plea agreement on behalf of the United States Attorney for the Northern District of Ohio.



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Date 5/7/10

APPROVED:



UNITED STATES DISTRICT JUDGE

Date 5/7/10

Attachment A
Ferris Kleem

At all times relevant to the Information:

1. Cuyahoga County, Ohio ("County") was a government agency that received benefits in excess of \$10,000 during each calendar year relevant to this Information under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance and other form of federal assistance. Its departments included the Auditor's Office, which was headed by an elected public official.

2. The Board of Cuyahoga County Commissioners ("County Commissioners") was the central governmental body of the County. The Board of Cuyahoga County Commissioners consisted of three co-equal members who were elected at large for four-year terms. The County Commissioners' powers included budgeting, levying taxes, issuing bonds, letting contracts for public works services, monitoring expenditures, administering purchases and appointing key personnel.

3. The Cuyahoga County Auditor's Office ("Auditor's Office") was a government agency which received benefits in excess of \$10,000 during every calendar year material to this Information under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance and other form of Federal assistance. The Auditor's Office was headed by an elected public official.

4. The Parma City School District ("PCSD") was a government agency that received benefits in excess of \$10,000 during each calendar year relevant to this Information under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance and other form of federal assistance. The PCSD served the cities of Parma, Parma Heights and Seven Hills, Ohio.

5. Public Official 1 ("PO1") was an elected County official whose responsibilities included budgeting, levying taxes, issuing bonds, letting contracts for public works services, monitoring County expenditures, administering all purchases for County use, and approving funding to build and maintain certain roads.

6. Public Official 2 ("PO2") was an elected County official with overall responsibility for all County funds. He had the power to influence contracts and expenditures within the Office he was elected to operate.

7. Because of their high ranking positions within the County and their political longevity, PO1 and PO2 exerted significant influence over other public officials in the County. They supported each other and spoke on behalf of one another on County and political matters.

8. The Cuyahoga County Engineer's Office ("Engineer's Office"), headed by an elected official and operating under the auspices of the County Commissioners, was a government agency. The Engineer's Office was responsible for the maintenance and reconstruction of bridges and assisting municipalities with the improvement of County roadways. The Engineer's Office provided a variety of engineering, construction and land record keeping services.

9. John Kevin Kelley ("Kelley") was employed in various positions within County government, and also served on the PCSD Board of Education ("Parma School Board"). In both of those roles, Kelley had the power to influence public policy, contracts and expenditures.

10. PO1, PO2, and Kelley were agents of the County and Kelley was also an agent of the PCSD.

11. Defendant FERRIS KLEEM was the Vice-President of Blaze Construction Co., Inc. ("Blaze Construction"), President and majority owner of Blaze Building Corporation ("Blaze Building"), and half owner of Phoenix Cement, Inc. ("Phoenix"), all located in Berea,

Ohio.

12. Public Employee 1 ("PE1") was employed by the Engineer's Office.
13. Public Employee 4 ("PE4") was an employee of the Auditor's Office and was a close friend and confidante of PO1.
14. Public Employee 10 ("PE10") was a County employee with jurisdiction over certain aspects of County contracting.
15. Public Employee 11 ("PE11") was a County employee who reported to PO1.
16. Public Employee 12 ("PE12") was an employee of the PCSD with jurisdiction over certain aspects of PCSD contracting.
17. Public Employee 15 ("PE15") was a County official with jurisdiction over smoking issues.
18. Public Official 3 ("PO3") was an elected official with jurisdiction over inspectors on road construction projects.
19. Public Official 6 ("PO6") was an elected official with the power to influence certain aspects of City of Cleveland contracting.

HUD-funded County Grant to City of Berea

20. Beginning in the mid-1990's, KLEEM engaged in a series of fund raising efforts to benefit the City of Berea; namely, building a clock tower, retiring the Berea City Club's debt, and building a nature trail adjacent to Coe Lake. After the nature trail was built, residents wanted to build a bridge to connect the trail to a pavilion across the lake. In 2007, and at KLEEM'S request, PO1 and PO2 used their influence to assist the City of Berea obtain a \$150,000 grant funded by the United States Department of Housing and Urban Development ("HUD") and awarded by the County.

The Juvenile Justice Center Project ("JJC project")

21. In 2006, the County Commissioners approved the construction of a new Juvenile Justice Center at East 93rd Street and Quincy Avenue in Cleveland, Ohio, at an estimated cost of \$160 million.

22. On or about December 13, 2007, the County Commissioners issued requests for proposals ("RFPs") for various portions of the JJC project. Blaze Building sought the General Trades portion of the JJC project budgeted at approximately \$22.6 million. Phoenix Cement sought the concrete portion of the project valued at approximately \$4.6 million.

23. Phoenix was the low bidder on the concrete portion and on or about March 20, 2008, received the \$4.6 million contract without the corrupt influence of any public officials.

24. On March 20, 2008, the County Commissioners voted to reject all bids received for the general trades portion of the JJC and ordered that the general trades be rebid with revised specifications and estimates.

25. On or about April 3, 2008, the County Commissioners approved an addendum to the general trades portion of the JJC project, making technical changes and changing the estimated cost from \$36,800,000 to \$37,000,000.

26. On or about April 7, 2008, the bids were opened. Blaze bid approximately \$38 million but was the second low estimate bidder and did not get the contract.

27. On or about April 24, 2008, the County awarded the contract to the low bidder.

The Snow Road Resurfacing Project

28. In or about October 2007, the Engineer's Office issued an RFP for resurfacing Snow Road from Ridge Road to Broadview Road in the City of Parma.

29. On or about May 1, 2008, Blaze Construction, the low bidder, obtained the \$2,887,359 contract to resurface Snow Road.

30. From in or about June 2008 to on or about September, 2009, the County paid approximately \$3.5 million for the Snow Road resurfacing project, after approved change orders.

BE13 and Business 22

31. Business Executive or Employee 13 ("BE13") was a consultant who served clients attempting to obtain public contracts. One of his clients, Business 22, was an MCO; that is, a health organization that finances and delivers health care using a specific provider network and specific provider services. Business 22 retained BE13 to solicit public and private employers to contract with Business 22. PO1 and PO2 had an interest in the success of BE13's consulting business. Business Executives or Employees 15 and 16 were principals of Business 22.

32. On several occasions, PO1 and PO2 urged KLEEM to enroll his employees in Business 22. He declined the first time they solicited him, but agreed, in Spring 2008, to switch some of his employees to Business 22. PO1 and PO2 also urged KLEEM to persuade a relative of KLEEM to switch his employees to Business 22, indicating that KLEEM owed it to them because PO1 and PO2 had backed KLEEM'S relative in a political campaign.

THE CONSPIRACY

33. From in or about Fall 2006, and continuing through on or about July 28, 2008, in the Northern District of Ohio and elsewhere, Defendant FERRIS KLEEM, John Kevin Kelley (not charged herein), and others known and unknown to the United States Attorney, did knowingly and willfully combine, conspire, confederate and agree with each other to commit an offense against the United States that is, an agent of Cuyahoga County corruptly soliciting, demanding, accepting, and agreeing to accept anything of value from any person intending to be influenced and rewarded in connection with any business, transaction and series of transactions of the County, which receives more than \$10,000 per calendar year in federal funds, involving

anything of value of \$5,000 or more and corruptly giving, offering, and agreeing to give anything of value to any person with intent to influence and reward an agent of Cuyahoga County in connection with any business, transaction or series of transactions of Cuyahoga County involving anything of value of \$5,000 or more, in violation of Title 18, United States Code, Sections, 666(a)(1)(B) and (a)(2).

OBJECT OF THE CONSPIRACY

34. It was the object of the conspiracy that Kelley, PO1, PO2 and others abused their official positions by soliciting and accepting things of value in exchange for performing official acts and promising to perform official acts to benefit KLEEM and KLEEM's interests.

35. The official acts included, among other things, exerting influence over the award and administration of public contracts, exerting influence over the use of public funds and exerting influence over the actions of other County employees and public officials. The things of value included, among other things, cash, gaming chips, travel, meals, political contributions and entertainment for Kelley, PO1 and PO2; and MCO business from KLEEM and a relative of KLEEM for BE13.

MANNER AND MEANS

36. It was part of the conspiracy that KLEEM regularly provided things of value to PO1 and PO2 with the expectation that PO1 and PO2 would perform official acts as the need and opportunity arose for the benefit of KLEEM, his companies and his designees.

OVERT ACTS

37. In furtherance of the conspiracy, and to effect the objects thereof, KLEEM and others committed the following overt acts in the Northern District of Ohio and elsewhere:

38. In or about Fall 2006, KLEEM asked PO1 and PO2 to assist him in obtaining a HUD-funded County grant for the City of Berea to build a pedestrian bridge connecting a nature

trail to a pavilion on Coe Lake.

39. In or about late 2006 or early 2007, PO1, in the presence of PO2 and KLEEM, called a County employee in an effort to expedite Berea's application for the grant.

40. Shortly before November 29, 2006, PO1 asked KLEEM to purchase a refrigerator valued at approximately \$1,150 and to have it delivered to the PO1 residence.

41. On or about November 29, 2006, KLEEM, through one of his companies, purchased the refrigerator and arranged for Blaze employees to deliver it to the PO1 residence.

42. On or about December 11, 2006, KLEEM paid \$2,000 in cash toward PO1's purchase of a Rolex watch.

43. On or about February 1, 2007, the County Commissioners unanimously voted to award a HUD-funded \$150,000 grant to the City of Berea for the Coe Lake Nature Trail and Bridge Project, PO1 having performed an official act in furtherance of the County's approval of the grant agreement.

44. In or about February 2008, KLEEM asked PO1 to assist KLEEM's brother with a smoking violation citation KLEEM's brother had received at his restaurant during a fundraiser at which PO2 had been smoking.

45. On or about February 22, 2008, at approximately 2:15 p.m., Kelley had a telephone conversation with KLEEM in which Kelley said he was with PO1 and PO2 and further said, "We are putting a little trip to Vegas together." KLEEM replied, "Are we?" Kelley responded in the affirmative and asked KLEEM to join them. Kelley provided KLEEM with the dates of the trip and the names of those going, including Kelley, PO1, and PO2. When KLEEM replied that he was "definitely in" for the trip, Kelley told KLEEM, "Hold on, [PO1] wants to talk to you." PO1 asked KLEEM about a smoking citation which had been issued at KLEEM's brother's restaurant and whether PE15 helped KLEEM. KLEEM replied, "Oh yes." PO1 then

stated, "I just wanted to make sure he treated you right. " KLEEM responded, "He definitely did." KLEEM then told PO1 that he was "excited about this April trip" and asked if PO1 had booked his flight. PO1 replied, "No, they are going to book it this week I guess." KLEEM asked, "Do you want to be on the same plane with everybody or do you want me to take care of some things?" PO1 and KLEEM discussed traveling for personal reasons and staying at the Mirage Hotel and Casino in Las Vegas. KLEEM said, "I will get everybody, tell everybody tell them to use my name and then I don't have to get involved and everybody gets the casino rate, okay." PO1 replied, "Okay." KLEEM continued, " They will get the lowest rate and you and [PO2], I will take care of you with a suite." KLEEM added, "When I see you, we'll talk." The conversation then turned to the JJC project. KLEEM told PO1, "You know this JJC, it is way over budget on the general trades." PO1 replied, "It is?" KLEEM said, "It is going to be \$35 million [PO1] instead of \$22 [million]. You going to be able to award it to me if I am low?" PO1 responded, "Yeah."

46. On or about February 22, 2008, at approximately 3:16 p.m., KLEEM and PO1 had a telephone conversation in which KLEEM told PO1 Blaze Building was about \$10 million over budget on the JJC project. PO1 responded, "Okay. There was nobody lower?" KLEEM said, "Yeah ... we're low, we're low." PO1 said, "Oh you're the lowest, good." KLEEM and PO1 then discussed details of the bids. PO1 said, "I'm gonna get a copy of the bids." KLEEM also told PO1 that his other company, Phoenix Cement, was the low bidder on the concrete portion of the JJC Project and would not be an issue. PO1 replied, "No headache there."

47. On or about March 10, 2008, at approximately 11:41 a.m., Kelley and KLEEM had a conversation about the Las Vegas trip. Kelley informed KLEEM that PO1 and PO2 only wanted a select group of people to travel with them to Las Vegas because "they [PO1 and PO2] were afraid about too many people knowing too much about what we are doing," KLEEM

indicated he would have his secretary "book" all the hotel rooms. KLEEM then asked Kelley who was "taking care of the travel." Kelley responded by telling KLEEM it was up to him how KLEEM wanted to handle the travel. Kelley also informed KLEEM that PO1 and PO2 were traveling first class and asked, "If you want to do that, you know, I can book that for you if you want." KLEEM replied, "Absolutely. I can take care of that, that's not a problem. I, I need to know the times and the dates and tell [my secretary] I'll talk to my travel agent and I'll get it arranged, but you know we got to work it out in a certain way, you know that -- right?" Kelley replied, "Yeah, absolutely."

48. During March through May 2008, KLEEM, PO1, PO2 and BE13 had a series of telephone conversations about KLEEM switching his MCO accounts to Business 22. In addition, PO1, PO2 and BE13 pressured KLEEM to speak to his relative about switching MCO providers. As a result of the pressure from PO1 and PO2, KLEEM agreed to switch his MCO account for some of his employees to Business 22. KLEEM also spoke to his relative about switching to Business 22. Despite KLEEM's conversation with his relative, the relative chose not to switch.

49. On or about March 20, 2008, the County Commissioners awarded Phoenix Cement a \$4,576,000 contract for the concrete portion of the JJC project, PO1 having taken an official act to assist Phoenix Cement in securing the contract.

50. On or about April 2, 2008, KLEEM met with PO1 and PO2 at Teamz Restaurant to discuss the Las Vegas trip. During the meeting, KLEEM gave PO1 and PO2 each an envelope containing \$6,000 in cash, \$1,000 each for their airfare to Las Vegas, and \$5,000 each for gambling, the latter to insure that PO1 and PO2 each gambled enough to earn the "comped" suites at the Mirage that KLEEM had reserved.

51. On or about April 2, 2008, during the Teamz lunch described above, KLEEM told

PO1 he was having trouble determining whether he had obtained a taxi-way contract on which he had bid at Cleveland Hopkins International Airport. PO1 called PO6, stating that he was "sitting with a good friend of ours, FERRIS KLEEM." PO1 asked PO6 about the status of the taxi-way project for which Blaze Construction was the low bidder. KLEEM then began speaking on PO1's telephone. KLEEM told PO6, "We bid it about a month and a half ago, six, maybe eight weeks ago now and its just been going around and I can't get no answers from down there." PO6 stated, "That's a phone call away," and confirmed the name of the project. PO6 asked, "Should I call you directly or just call [PO1]?" KLEEM provided PO6 with his cell phone number for a direct call back. PO6 stated, "I won't specifically ask for you [KLEEM], I'll just say, 'What's the status of everything in . . . if everything is in place, would it be proper assumption that low bid would get it?'" PO6 also told KLEEM that he would obtain information about the "timing" of the contract award.

52. On or about April 6, 2008, PO1, PO2, PO2's traveling companion, Kelley, and others flew to Las Vegas.

53. On or about April 6, 2008, KLEEM called PO1 and asked if PO1 found the limousine driver who was waiting for PO1 at the Las Vegas airport. KLEEM told PO1 to check in as a VIP at the Mirage.

54. On approximately fifteen occasions from on or about April 7, 2008 to on or about April 8, 2008, KLEEM gave gaming chips to PO1 valued at approximately \$3,500 in total.

55. On or about April 7, 2008, KLEEM gave four \$500 gaming chips to Kelley. Kelley later paid KLEEM for two of the chips.

56. From on or about April 6, 2008 to on or about April 8, 2008, KLEEM spent approximately \$3,500, excluding the gaming chips KLEEM gave to PO1 and Kevin Kelley, entertaining Kelley, PO1, PO2, PO2's travel companion and their friends in Las Vegas.

57. On or about April 7, 2008, KLEEM, PO1, and PO2 learned the bids for the general trades portion of the JJC project had been opened and that Blaze was not the low bidder.

58. On or about April 8, 2008, and during the Las Vegas trip, PO1 asked KLEEM to hire a prostitute for PO1. In response, KLEEM paid a prostitute approximately \$1,000 in cash and escorted the prostitute to PO1's suite at the Mirage for the purposes of providing services to PO1.

59. On or about April 8, 2008, at approximately 9:45 p.m., KLEEM called PO1 to say that he was trying to bring a woman up to PO1's room. PO1 said, "This girl. . . Give me a massage that that? Is that what she does and then. . ." The call dropped and PO1 called back and asked, "I just said, she gives a massage. Is that how we're going to start her out?" KLEEM responded, "It's yeah, don't worry. I'll be there in a minute."

60. On or about April 9, 2008, at approximately 12:44 a.m., PO1 called KLEEM and thanked him. KLEEM asked PO1, "Was that the best or what?" PO1 said, "Yeah, she's good but a little chatty." PO1 thanked KLEEM, who said, "No problem buddy." PO1 and KLEEM then agreed to meet at 1:00 a.m. at the Chinese Restaurant in the Mirage.

61. On or about April 9, 2008, at approximately 1:35 a.m., while at the Chinese Restaurant in the Mirage, KLEEM asked PO1 to have a certain inspector at the County Engineer's Office assigned to the Snow Road project. PO1 agreed to use his influence to have the inspector assigned to the Snow Road project.

62. On or about April 9, 2008, at approximately 1:26 p.m., KLEEM, while at the Las Vegas Airport, called PO1 who was at the Mirage. During the call, KLEEM told PO1 he had heard PE10 was going to recommend throwing out the low bid for the JJC general trades contract. PO1 inquired whether the low bid was going to be disqualified because of the "SBE." KLEEM replied, "Yeah." PO1 then confirmed he had previously heard some rumblings that the

SBE used by the low bidder was "questionable." KLEEM then added that the SBE subcontract was also unsigned. PO1 said, "We threw out the same thing for the fire suppression system," referring to an unsigned SBE. PO1 later added, "Well, that's good news for you [referring to the possibility that KLEEM's higher bid might be accepted]." KLEEM responded, "Yeah it is." PO1 then offered to have PE11 make some inquiries about the questionable SBE and call KLEEM back. KLEEM informed PO1 he (KLEEM) was boarding a plane in fifteen minutes and suggested they talk when they returned to Cleveland. KLEEM also said, "I just wanted to let you know, see if there was anything you know, you could do." PO1 indicated he would check with PE11 to see what was going on with the bid. PO1 also told KLEEM that PO1 was going to meet with the Mirage marketing host to check out. PO1 said the Mirage had charged PO2 for his suite. KLEEM replied, "Yeah, yeah, I'll take care of him, don't worry just whatever, whatever we got to do." PO1 then suggested he would not be charged for his room because he "gambled pretty heavy on every day." KLEEM replied, "I think you're fine. I think you're fine." PO1 added, "I think he [PO2] also charged a bunch of s-t to his room." KLEEM replied, "Yeah, we'll take care of it, don't worry." PO1 again offered to "check on that other thing [the low bid on the JJC project]." PO1 and KLEEM agreed they had a great time in Las Vegas. PO1 said, "It was a f---ing blast." KLEEM replied, "Ohhhh . . . It was the bomb. We got to do it again." PO1 said, "We were all just saying what a f---ing great time we all had. We appreciate your hospitality and your generosity. That's very nice of you." PO1 concluded the conversation by telling KLEEM, "Well, I'm going to keep my fingers crossed for you. That [the JJC project] would be a good thing for you."

63. On or about April 10, 2008, at approximately 11:05 a.m., Kelley thanked KLEEM for everything in Las Vegas and informed KLEEM that he (Kelley) owed KLEEM money. KLEEM responded, "I don't want to hear that anymore, just take care of me some time and do

KLEEM responded, "I don't want to hear that anymore, just take care of me some time and do something." Kelley replied, "Well, you know that, that goes without saying." KLEEM then told Kelley the name of the inspector KLEEM wanted assigned to the Snow Road resurfacing project. Kelley told KLEEM, "Okay, that's good, I'll call you right back okay, let me get started on that right now."

64. On or about April 10, 2008, at approximately 11:14 a.m., Kelley and KLEEM had a second telephone conversation in which Kelley recounted a conversation Kelley had with PE1. Kelley said PE1 had not been receptive to KLEEM's request that a certain inspector be assigned to the Snow Road resurfacing job. In response, Kelley had invoked PO1's name and told PE1 that PO1 wanted to do this for KLEEM and suggested if PE1 could not "get it done," PO1 would contact PO3 directly to make sure the inspector was assigned to the job. Once Kelley had said this to PE1, PE1 agreed to "look into" the situation.

65. On or about April 10, 2008, at approximately 2:22 p.m., KLEEM told PO1's wife to schedule delivery of a television to PO1's residence. At approximately 3:20 p.m., a television was delivered to PO1's residence

66. On or about May 1, 2008, the County Commissioners voted unanimously to award the Snow Road resurfacing project in Parma in the amount of approximately \$2,887,359 to Blaze Construction, PO1 having taken an official action regarding County approval of the contract.

67. In the Spring of 2008, the inspector KLEEM had requested was assigned to the Snow Road project.

68. On or about May 21, 2008, at approximately 4:26 p.m., KLEEM and Kelley had a telephone conversation during which Kelley informed KLEEM that he (Kelley) was traveling to Las Vegas for a conference. Kelley asked KLEEM if Kelley could use KLEEM's contact at the

Mirage Hotel and Casino so Kelley could receive the casino rate for a hotel room. KLEEM replied, "Absolutely." KLEEM then inquired about an asphalt replacement job at the PCSD. Kelley informed KLEEM the job went out for bid that day.

69. On or about May 21, 2008, at approximately 4:41 p.m., Kelley conducted a three-way call with KLEEM and PE12 in which they discussed the asphalt replacement project at the PCSD. After a discussion about the project's specifications, Kelley said, "[PE12], FERRIS [KLEEM] is a very, very, very good friend. So, whatever we can do to help him, ya know." PE12 replied, "Absolutely."

70. On or about May 23, 2008, PE4 went to KLEEM's office and told him PO1 had sent PE4 to tell KLEEM that Steve Pumper had been approached by the FBI and that KLEEM should stay away from Pumper because Pumper might be "wired."

71. On or about May 28, 2008, at approximately 11:46 a.m. KLEEM thanked PO1 for the "message," which was a reference to the message KLEEM received from PE4 about Pumper. PO1 indicated everything was alright so far but PO1 "is always waiting for the other shoe to fall or drop." KLEEM replied, "Well there is no other shoe to drop. I think everything is going to be good." KLEEM then inquired about a County employee who wanted to move from temporary to permanent status. PO1 said he would have PE11 check on it but, PO1 said he thought a letter needed to be sent to the County from the union. KLEEM responded, "It needs a push, [PO1], it's just stuck on somebody's desk somewhere." PO1 indicated he had spoken to the employee's father about it the previous night. KLEEM later said, "We need to get it done ... we promised him [the employee's father]. I got to deal with him all summer, you know, he'll drive me crazy." PO1 said he would call PE11 "and have him see what's going on." At the conclusion of the call KLEEM and PO1 agreed to meet at a later date. KLEEM also told PO1, "Don't worry too much."